SUPERIOR COURT
of the
STATE OF DELAWARE

Susan C. Del Pesco
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Submitted: April 4, 2006
Decided: April 19, 2006

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Re: *Susan P. Robbins, Ind. And as Administratrix of the Estate of Gary D. Robbins, II, and Gary D. Robbins, Sr., v. William H. Porter, Inc., d/b/a Porter Nissan*
C.A. No. 04C-06-289 SCD

Decision Upon Defendant Porter Nissan's Motion for Summary Judgment - **DENIED.**

Dear Counsel:

This case involves a fatal one-car accident.[1] Two of the four people in the 1999 Mercury Cougar ("vehicle") were killed. The plaintiff's decedent, Gary Robbins, was one of the fatalities. There is a fact issue regarding the identity of the driver of the vehicle at the time of the collision, although it appears that the other decedent, Jose Rodriguez, may have been the driver.[2]

[1] On September 13, 2002, four boys, Jose Rodriguez, Gary Robbins, Shawn Wagner and Aaron Hollis were involved in a fatal single-vehicle accident on Choptank Road in Middletown, Delaware.
See Def. Opening Br., Ex. F.

[2] There appears to be conflicting testimony from the two surviving passengers who claim Jose Rodriguez was operating the vehicle at an excessive rate of speed on September 13, 2002, and an eyewitness, Jimmy Snow, who described Shawn Wagner operating the vehicle on September 13, 2002.
See Def. Opening Br., Ex. G at 29, Ex. H at 20, 25-27, Ex. I 14-15, 20, 22-24.

Defendant William H. Porter, Inc. ("Porter") is involved in this matter because the vehicle in question was stolen from the used car lot at Porter Nissan approximately two weeks prior to the accident.[3] The plaintiff alleges that Porter was negligent in controlling access to its vehicle, and offers as evidence a list of prior criminal activity at the property, including the prior theft of four vehicles.[4] The evidence indicates that there was no forced entry into this vehicle, leaving open an argument that the keys to the vehicle were located therein, or were otherwise unsecured.

Porter seeks summary judgment on two grounds: that it owed no duty to the decedent, and that the criminal conduct was an intervening cause of the accident, relieving Porter of liability.

The standard of review for summary judgment requires that the Court consider all facts in a light most favorable to the non-moving party, and determine whether there is a genuine issue of material fact requiring a trial.[5]

There is an issue of fact as to whether Porter was negligent in protecting its vehicles, dangerous instrumentalities, from theft.[6] Vehicle owners have a duty to third parties to secure

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[3] Porter reported the theft of the 1999 Mercury Cougar on September 4, 2002, to the Newark Police.
See Def. Opening Br., Ex. D

[4] Plaintiffs' Answering Brief lists thirteen reported criminal acts which occurred at Porter Nissan from April 17, 2000 to August 20, 2002.
Pls. Op. Br. at 4-6.

[5] *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

[6] Porter admits that vehicles were sometimes loaned to customers or borrowed by staff. Porter submits that company protocol required keys to be locked in a lockbox in the used car's manager's office for safety purposes.
See Def. Opening Br., at 4.
Robbins points out that certain protocol of Porter was not always followed by employees and that Porter lacked security measures, including use of inoperable video cameras.
See Pls. Answering Br., at 3-4

their property against theft. This duty is predicated on the forseeability that stolen vehicles will be involved in accidents.[7]

As to the causation issue, the law regarding liability of a vehicle owner for the negligent conduct of a thief who steals his vehicle is well established:

> [I]n a case of negligent conduct followed by an intervening act causing injury, liability of the tortfeasor should turn on whether "the risk of particular consequences is 'sufficiently great to lead a reasonable man . . . to anticipate them, and to guard against them.'"[8]

Typically, causation "including any issue of intervening causation, is ordinarily a question of fact for the jury."[9] This is especially true in this case because the facts are unclear as to who stole the vehicle, how it got into the hands of Rodriguez, Robbins, Wagner and Hollis and who was driving the vehicle at the time of the accident. Those factual issues will impact the analysis of forseeability.

Porter's motion for summary judgment is DENIED.

IT IS SO ORDERED.

Very truly yours

/s/ Susan C. Del Pesco

Susan C. Del Pesco

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[7] *Vadala v. Henkels & McCoy, Inc.*, 397 A.2d 1381, 1383 (citing *Hill v. Yaskin*, 380 A.2d 1107 (N.J. 1977)). *See also* Reese *v. Wheeler*, 2001 WL 914014 *2 (Del. Super. Ct.).
[8] *Sirmans v Penn*, 588 A.2d 1103, 1107 (Del. 1991) (quoting W. Prosser, *The Law of Torts* 145 (4th ed. 1971)).
[9] *Van Arsdall v.Wilk*, 2001 WL 884159 (citing *Duphily v. Delaware Elec. Co-op., Inc.*, 662 A.2d 821, 830 (Del. 1995); *McKeon v. Goldstein*, 164 A.2d 260 (Del. 1960)). *See also Wilmington Country Club v. Cowee*, 747 A.2d 1087 (Del. 2000).